

National Crime Prevention and Privacy Compact

**COMPACT COUNCIL MEETING
SCOTTSDALE, AZ
FEBRUARY 25-26, 2003**

MINUTES

The meeting of the Compact Council was called to order at 9:00 a.m. on February 25, 2003, in the Grand Ballroom of the Renaissance Scottsdale Resort, Scottsdale, Arizona, by Compact Council Chairman Wilbur Rehmann. In Chairman Rehmann's opening remarks, he noted agenda changes and mentioned that Topic #14 would be a conference call with the Transportation Security Administration (TSA).

Chairman Rehmann advised that the next scheduled meeting would be held in West Yellowstone, Montana. He provided the Compact Council members with Montana brochures and maps of Yellowstone National Park.

Chairman Rehmann stated that a Sanctions Committee meeting was held on February 24, 2003, to discuss the proposed Sanctions Rule. He thanked Ms. Donna Uzzell, Florida Department of Law Enforcement, and Mr. Paul Woodard, SEARCH, for their assistance and hard work in drafting revisions to the rule.

Ms. Cathy Morrison, Interim FBI Compact Officer, called the roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance.

State Compact Officers:

- Mr. Rusty Featherstone, Oklahoma State Bureau of Investigation
- Lt. Col. Jeff Harmon, Maine State Police
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Mr. Wilbur Rehmann, Montana Department of Justice

- Ms. Donna Uzzell, Florida Department of Law Enforcement
- Major Mark Huguley, South Carolina Law Enforcement Division
- Ms. Diane Schenker, Alaska Department of Public Safety
- SFC John H. O'Brien, New Jersey Division of State Police
- Mr. David Sim, Kansas Bureau of Investigation

State/Local Criminal Justice Agency Representative:

- Vacant

Federal Noncriminal Justice Agency Representative:

- Ms. Lana Adams, Office of Personnel Management (proxy for Kathy Dillaman, Office of Personnel Management)

Federal Criminal Justice Agency Representative:

- Ms. Winona Varnon, Transportation Security Administration

Advisory Policy Board Representative:

- Mr. Frank Sleeter, Sun Prairie Police Department, Sun Prairie, Wisconsin

Federal Bureau of Investigation:

- Mr. Michael Kirkpatrick, FBI, CJIS Division

Meeting attendees in the gallery introduced themselves and the agency they represented (See Attachment 1).

The next item of business was the approval of the minutes from the October 2002 meeting.

Compact Council Action: Mr. Michael Kirkpatrick made a motion to approve the October 2002 minutes. The motion was approved by acclamation.

Chairman Rehmann next initiated/addressed agenda items.

Topic #1 Status Report of the Memorandum of Understanding with Nonparty States

Chairman Wilbur Rehmann, Montana Department of Justice, presented this topic. He stated that Council members had discussed the MOU at the October 2002 meeting and subsequently came back and further refined it. Minor changes were made and the MOU was hand-distributed at the January 2003 SEARCH meeting. Nebraska is the only state that executed the MOU to date. Chairman Rehmann felt that a follow-up phone call should be made to each state to ensure that the MOU was received by someone in the state with signatory authority. Major Mark Huguley suggested that Compact Council members assist with the follow-up phone calls. The Council members decided to divide the list of states by region and contact the states in order to expedite the process.

Compact Council Action: This topic was accepted as information only.

Topic #2 Delayed Fingerprint Submission Time Frame

Ms. Paula Barron, FBI CJIS staff, presented this topic. Ms. Barron reported that the Council's Fingerprint Requirement Rule and Florida Proposal was published in the Federal Register in May 2001. Since that time, nine other states have been approved to utilize the emergency child placement III access and all agreed to the five-day fingerprint submission time frame. Upon implementation, however, several state agencies have requested reconsideration of the time frame required for these submissions.

At the October 2002 meeting, a discussion developed regarding the interpretation of the submission time frame. Chairman Rehmann asked the Standards Committee to take up this issue and bring a recommendation to the Council's February 2003 meeting.

At its January 2003 meeting, the Standards Committee discussed the term "submission". The Committee's recommended draft language is shown in bold in the following portion of 901.3(b)(2):

The fingerprints must be submitted within the time frame specified by the Compact Council. **For the purposes of this rule, "time frame" means the**

**number of
days that elapse between the date on which the name search
was conducted
and (1) the date on which the state repository either positively
identifies the
fingerprint subject or forwards the fingerprints to the FBI or
(2) the date a
Federal agency forwards the fingerprints to the FBI.**

The Council believed that in order to be equitable in reassessing time frames, further data was necessary. Chairman Rehmann asked the CJIS staff to forward a letter to each of the states authorized to use the delayed submission of fingerprints for emergency child placements, asking for actual statistics on time frames for processing prints, with a breakdown on electronic submissions and hard copy submissions.

To date, the states of Florida, New Jersey, Idaho, Tennessee, Wisconsin, and California have provided feedback (See Attachment 2). The responses ranged from 0-1 to 6-10 days for electronic submissions and from 0-10 to 28-42 days for manual submissions.

Ms. Donna Uzzell distributed a graph summarizing Florida's time frames for Purpose Code X submissions.

The Council also addressed the corollary of name checks to the number of delayed fingerprint submissions received. Discussion included reasons why a one-to-one match of name checks and fingerprint submissions won't always occur and the possible need to add a compliance standard to the Rule's time frame language. Ms. Stark, CJIS Audit Unit Chief, suggested that perhaps state policy should require a log be kept on the reasons fingerprints were not submitted. Ms. Stark offered future staff assistance in compiling audit results for review to aid in establishing a compliance standard.

After considerable discussion, the following motion was approved.

Compact Council Action: Ms. Donna Uzzell, Florida Department

of Law Enforcement, made a motion to recommend that the time frame be extended for the Florida proposal to 15 calendar days. 15 calendar days as defined by the Standards Committee. The Council instructs that submission receipts falling outside of the 15 calendar days must be documented and such documentation be made available for audit purposes. The motion was seconded by Major Mark Huguley. The motion carried.

**It should be noted that the Council intended this change would become effective immediately.*

Chairman Rehmann requested CJIS staff draft a letter to all states currently authorized to use the delayed submission of fingerprints for emergency child placements, notifying the states of the expanded submission time frame. States should be advised that their five day submission time frame as previously authorized, would retain in effect unless the state notified the Council requesting an expanded time frame up to 15 days.

Chairman Rehmann also requested the CJIS Audit Unit compile and report results of Purpose Code X audits to the Sanctions Committee and the Compact Council.

Topic #3 Standards Committee Report on Proposed Amendments to Delayed Fingerprint Submission Requirements Rule

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented a brief background on this topic. In January 2002, the Council considered a proposal to expand CJIS programs to include audits of noncriminal justice agencies with direct access to the Interstate Identification Index (III) for the emergency placement of children in exigent circumstances.

At the October 2002 meeting, the Council generally agreed the rule needed to specify the intent to audit III access, upon using the Delayed Fingerprint Submission Requirements Rule. To that end, the following motion was made:

Lt. Col. Harmon made a motion to refer [to the Standards

Committee]

the issue of developing specific language as an amendment to Purpose

Code X and the emergency placement rule that makes it explicit that

state audits are required.

At its January 2003 meeting, the Standards Committee proposed adding the following language to the Delayed Fingerprint Submission Requirements Rule to explicitly state audits are required:

Section 901.4 Audits

Audits of authorized agencies that access the III System shall be conducted by the state's Compact Officer. In absence of a Compact Officer, the chief administrator for the criminal history record repository or the responsible federal service coordinator shall ensure that similar audits are conducted of authorized state or federal agencies. Such audits shall be conducted to verify adherence to the provisions of Part 901 and the FBI's Criminal Justice Information Services Security Policy.

Authorized agencies shall cause to be collected an appropriate record of each instance of III System access through a manual or electronic log. The log shall be maintained for a minimum one-year period to facilitate the audits and compliance reviews. Such records shall be maintained in accordance with the CJIS Security Policy.

Additionally, the audit and compliance reviews must include mechanisms to determine whether fingerprints were submitted within the time frame specified by the Compact Council.

In addition to the audits as stated above, the FBI CJIS staff shall also conduct routine systematic compliance reviews of state repositories, federal agencies, and as necessary other authorized III System user agencies.

The Standards Committee also proposed adding the following

language to the Delayed Fingerprint Submission Requirements Rule regarding sanctions:

Section 901.5 Sanction for noncompliance

The Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions in accordance with rules, procedures, or standards as established by the Council. The approval for access to criminal history record information systems is subject to cancellation or discontinuance for violation of the National Crime Prevention and Privacy Compact Act, failure to comply with the provisions of Part 901, or failure to comply with FBI Criminal Justice Information Services Security Policy. The state's Compact Officer, the chief administrator of the criminal history record repository or the Federal Service Coordinator may take similar actions against a state or federal agency for failure to comply with applicable security policies.

The Council discussed on the merits of the proposed changes to the rule following Lt. Col. Harmon's briefing.

Compact Council Action: Lt. Col. Harmon made a motion to adopt the Standards Committee recommendations to Section 901.4 and 901.5 as presented. The motion was seconded by Mr. David Sim. The motion carried.

Chairman Rehmann requested CJIS staff amend the rule and forward it through the review process. Staff was further requested to work with Florida to publish its amended proposal in the Federal Register.

Topic #4 Dispute Adjudication Rule

Chairman Rehmann noted a few comments had been received on the Dispute Adjudication Rule published in the Federal Register on November 25, 2002. This topic was deferred until such time as the Dispute Resolution Committee could review the comments received on the rule. It is anticipated that the Committee will brief the Council on a recommended course of action at the June 2003 Compact meeting.

Topic #5 Standards Committee Report on the NFF State Qualification Requirements and Audit Criteria

Lt. Col. Jeff Harmon presented this topic. He reported the progressive steps the Standards Committee has taken in its work on the State NFF Qualification Requirements. The Committee began reviewing the requirements used in the NFF pilot program, adding a section for the FBI qualification requirements, reviewing audit methodology and adding criterion to measure compliance. The latest revisions to the document addressed: adding language to address the "sole source" notion; adding criteria for the rejection for criminal fingerprint submissions due to poor image quality; and adding a performance measurement for nonunique SIDS (0.25%). The standard does have one standard that is somewhat problematic to define. The qualification requirements regarding "record completeness, accuracy and timeliness" is viewed as subjective which makes it difficult to measure in the audit. The language in regard to "sealing was modified to be more consistent with the definition in the Compact. Lastly, the criterion for record response timeliness has been modified to reflect a performance measurement that is more consistent with today's operation environment.

The Committee viewed that the State NFF Qualification Requirement portion is ready to be acted on by the Council. Lt. Col. Harmon presented the Council with options on how to move forward with the State NFF Qualification Requirements. The first option would be to publish the Qualification Requirements as a rule. Another option would be to publish a rule that requires the NFF states to comply with the Qualification Requirements, but not delineate the requirements in the rule itself, but set forth as a reference in the rule.

Next, the Council directed FBI staff to incorporate a qualification requirement and an associated audit criterion regarding image quality into the document, as well as, complete an analysis on CJIS system specifications and operational capabilities regarding system response times.

Chairman Rehmann requested CJIS Access and Integrity Unit obtain an opinion on whether a master fingerprint can be a composite of criminal and civil prints.

During discussion of the state Qualification Requirements, the issue of "expungements" came up with a question from Council member Dave Sim, Kansas Bureau of Investigation. The Compact Team was asked to work with the Access and Integrity Unit on a staff paper outlining an expungement definition and appropriate record dissemination.

Compact Council Action: Lt. Col. Harmon made a motion to adopt the amended State Qualification Requirements as presented. The motion was seconded by Major Mark Huguley. The motion carried.

Lt. Col. Harmon suggested that staff develop a rule and submit the rule through the process of internal review, due to time constraints. He said that by the next Council meeting, the Standards Committee plans to have the FBI Qualification Requirements ready for Council review.

Topic #6 Sanctions Committee Report

Ms. Donna Uzzell, Florida Department of Law Enforcement presented this topic.

Ms. Uzzell discussed the significant proposed changes to the Sanctions Rule. (See Attachment 3). The background section of the rule does not differentiate between party states and states that have not signed the MOU. The Sanctions Committee believed the judicious way to proceed was

in remaining silent on the issue, and resolving the matter if and when there can be a time that a non-party or non-MOU signing state was found out of compliance for the noncriminal justice of III.

The second issue was regarding establishing an independent audit team to conduct periodic audits of the FBI and agencies that submit record check requests to the FBI. The Committee did not

wish to specify the entity to actually conduct the audit or how to conduct the audit. The concern is whether or not the FBI should conduct self-audits. The Committee recommended the audit should be conducted independently so there would be no misconceptions regarding bias in the audit results. The specifics could be developed during the process.

The third point was the Sanctions Committee's intent to work in concert with the CJIS Advisory Policy Board's Sanctions Subcommittee to examine findings from CJIS staff audits and determine the proper arbiter over the sanctions process for each finding or instance of violation. Both groups concur that only one audit is desired.

Next, Ms. Uzzell pointed out that the Committee clarified the language under Section 905.3 "assessing compliance".

The last issue of importance was regarding deficiencies. The proposed sanctions process is progressive disciplinary action, with a minimum amount of discipline used to work with an agency to ensure voluntary compliance. The sanction process is not intended to be punitive, but to provide assistance in pointing out areas which need additional effort to be in compliance. The ultimate sanction for noncompliance would be cutting services off to an agency or suspending services to an agency for the use of III for noncriminal justice purposes. The Committee felt that type of decision would be determined by the full Compact Council. If an agency corrects the issue and wishes to be reinstated, reinstatement should occur as quickly as possible for public safety reasons. For reinstatement of full services, the offending agency would provide documentation to the Compact Council Chairman and the Sanctions Committee, simultaneously, documentation that the deficiencies had been corrected and/or that a process had been initiated to correct the deficiencies. The Sanctions Committee and the Compact Council Chairman would determine if those documentation was sufficient to reinstate full service. The decision would be ratified by the Council at its next scheduled meeting.

Ms. Uzzell stated that the Sanctions Committee recommends that staff forward this rule for through the internal FBI/DOJ review and

bring back a rule for promulgation at the earliest time frame possible.

Chairman Rehmann then opened the topic for discussion and questions. The Council discussed issues regarding security clearances for CJIS audits done by an independent or outside firm. Mr. Kirkpatrick stated that there are issues associated with an outside firm that are different than issues that the states face, due to national security responsibilities.

Ms. Robin Stark went over the options CJIS recommended to the Sanctions Committee. The first option was for the CJIS Audit Unit to conduct the audit since they are familiar with III policies and procedures. The second option was that the FBI Inspection Division conduct the audits, as they are somewhat familiar with III policies and procedures but are not familiar with the rules and regulations of the Compact Council. The third option was that the CJIS Audit Unit conduct the audits jointly with a member of the Compact Council. This issue becomes problematic, if the costs incurred from the audit are paid by CJIS. If the FBI paid for travel , there could be a perceived bias.

After a long discussion, the following action was taken.

Compact Council Action: The Council requested that FBI staff format the Sanctions Committee draft rule for Federal Register publication and provide feedback to the Sanctions Committee on the audit criteria, the GAO audit guideline requirements that clearly identify the security level needed for a CJIS audit, clarification of "independent audit" and if the CJIS Audit Staff would meet the GAO requirements. Staff is tasked with forwarding comments on the Rule and the additional information that to the Sanctions Committee prior to the June 2003 Compact Council meeting.

Topic #7 HUD Memorandum of Understanding

Mr. Danny Moyer presented this topic. He summarized that Chairman Rehmann had sent a letter to HUD requesting their representation at Compact Council meetings and has not received any response from them. It was Mr. Moyer's understanding that a

new Memorandum of Understanding (MOU) was being channeled because the MOU that was signed in May of 1996 was to have lasted six months or so and it is now approaching seven years. The legislation didn't state that the Public Housing Association (PHA) checks would be name-based or fingerprint based checks. In response to the legislation, the MOU stated that law enforcement agencies could do a name-based check to determine if an applicant for housing had a criminal history record. The response would not include the criminal history record, it would just give an indication as to whether or not there was a criminal record. The only time criminal history record is passed back to the PHA is if fingerprints are provided.

The area of concern for the Compact Council was whether or not the new MOU would include a requirement for submitting fingerprints. The issue is how DOJ would interpret the legislation and if they still would approve a name check or would they, based on the efficacy study, interpret that the checks should be a fingerprint based. Mr. Kirkpatrick stated that the concerns of the Council would be made known to DOJ. See Attachments 4, 5, and 6 for meeting handouts.

Compact Council Action: This topic was accepted as information only.

Topic #8 Outsourcing and Privatization of Noncriminal Justice Functions

CFR Ad Hoc Committee Report

Mr. Bob McKeever, Maryland Department of Public Safety, presented the CFR Ad Hoc Committee Report. He reported that in January 2002, Chairman Rehmann had asked him to Chair a committee that would work on permitting outsourcing and/or privatization of the use of III system for noncriminal justice purposes. A preliminary proposal was presented to the Council at its May 2002 meeting. On June 4, 2002, and again on December 3, 2002, the Committee met with the Chair and Vice Chair of the Council, CJIS APB representatives, and FBI staff to discuss and develop a plan. The CFR Ad Hoc Committee submitted its report

(See Attachment 7) for the Council's consideration. See Attachments 8 and 9 for meeting handouts.

CJIS staff was requested to format the approved privatization language for publication in the Federal Register and start the draft rule through the review process.

Standards Committee Report

Next, Lt. Col. Harmon, presented the Standards Committee report on the Ad Hoc Committee's draft report on the privatization proposal. The Standards Committee was tasked with developing the security and management control outsourcing standard. He reported that at the January 2003 Standards Committee meeting in Atlanta, Georgia, the Committee reviewed the CJIS Security Addendum used in privatizing criminal justice functions. Staff was asked to follow the existing CJIS Security Addendum and draft the security and management control standards for noncriminal justice entities. Staff was asked to present a draft for the Committee to review at its next meeting. The Committee will bring a Management Control Standard back to the Council for its approval upon completion.

Compact Council Action: This topic was accepted as information only.

Topic #9 Legislative Update/Review - as of January 31, 2003

Mr. Danny Moyer, CJIS Access Integrity Unit, presented this topic. The first Bill summarized was Senate Bill 22, *Justice Enhancement and Domestic Security Act of 2003*, a portion of which deals with proposed amendments to the National Child Protection Act.

Mr. Bobby Hamil, CJIS, Global Initiatives Unit, FBI CJIS, provided an update on some of the initiatives that his unit was currently involved with. The first one being the Violent Gang and Terrorist Organization Files (VGTOF) which are part of NCIC. Up until 9-11, these files were mainly used for officer safety.

The next issue discussed was the directive from the Attorney

General to incorporate the Department of State's Tipoff Database into NCIC. The Tipoff Database has about 30,000 names that are compatible for entry into NCIC.

Next, Mr. Hamil provided an update on some of the significant federal statutes that have impacted CJIS since 9-11. The primary statute in addition to Hazmat is the flight school statute, which is part of the Aviation Transportation Security Act. This statute requires that all foreign flight school students, trained in the US to fly planes, with a takeoff weight of over 12,500 pounds, to undergo a national security check conducted by the Attorney General. CJIS anticipates that background checks on flight school students will begin very soon.

Mr. Hamil then discussed The Public Health Security and Bioterrorism Act of 2002 which was passed in March of 2002 . This act requires background checks of persons who handle biotoxins and those who work at research facilities. This Act is expected to be implemented in March 2003.

Mr. Hamil also discussed Section 403 of the Patriot Act, which provides III and NCIC extracts to the Department of State (DOS) on a regular basis. To date, 425,000 NCIC records and over 7 million III records have been put in this File.

Mr. Hamil also mentioned that a team from CJIS traveled to Pakistan recently to conduct fingerprint training for the Pakistan government. The State Department funded this trip to teach fingerprint training techniques that are compatible with incorporation into IAFIS. Other countries have expressed interest in the same training.

Compact Council Action: This topic was accepted as information only.

Topic #10 National Fingerprint Based Applicant Check Study (NFACS) Update

Mr. Gary Barron, FBI CJIS Division staff, presented this topic. (See Attachment 10). Mr. Barron previously presented an update

on this topic at the October 2002 Council meeting and noted that since then tremendous progress has been made. The NFACS mission is to conduct a study and produce a final report exploring the feasibility of fielding a national, rapid, and positive fingerprint based identification background check system for authorized noncriminal justice purposes.

Current components of the NFACS are the Ohio WebCheck Pilot Project, the Texas Flat Fingerprint Initiative, FBI internal testing, third party testing conducted by the National Institute of Standards and Technology (NIST) and some latent testing to be done by the FBI Laboratory Division.

The first component that Mr. Barron spoke about was the Ohio WebCheck Pilot Project. Ohio had a system in place at the state level where they were actually using four fingers to do their applicant checks. The two thumbs and two index fingers. Ohio contacted the FBI and the FBI agreed to a Pilot that would utilize 10 flat images. During the pilot, they would be checked at the state level and then forwarded on to the IAFIS. The Pilot became operational on October 23, 2002. Originally, Ohio collected 10 rolled images and 10 flat images on the same applicant and submitted those to the state and FBI for processing. To date, approximately 950 civil applicants have been processed at the state and national level. Of those 950 applicants, 90 identifications were produced utilizing full IAFIS processing. Flat technical image searches were then conducted and identifications were produced on 86 out of the original 90 identifications. Rolled technical image searches were also conducted and produced 84 identifications out of the original 90 identifications. Extensive analysis is being done on the misses. Ohio will continue to submit flat images on applicant submissions at the state and IAFIS level. In addition, Ohio will forward 10 flat images (on applicant submissions identified only at the state level but having an FBI number) to IAFIS where technical image searches will be conducted. The FBI anticipates receiving anywhere from 100 to 200 of these transactions per month. The Pilot will continue until October 23, 2003. The goal of the pilot is to analyze the search of flat fingerprints against a large fingerprint repository and to develop a better understanding of the system requirements, time frame, and costs required to implement this capability on a larger

scale.

Next, Mr. Barron provided an update on the Texas Flat Fingerprint Initiative. Texas is scheduled to start providing applicant submissions to be processed at the state level. The Texas Department of Public Safety recently implemented their Pilot at a Dallas county volunteer agency using Livescan devices for submission of both 10 flat and 10 rolled images when conducting these civil applicant checks. The Livescan devices will collect the rolled images (once) along with the plain impressions. The modified software will allow plain impressions to be used to create a virtual card, taking the plain impressions and populating a fingerprint card. These will be submitted to the state AFIS.

The third component is FBI internal testing. Currently, a sample of at least 10,000 known civil ident submissions have been collected at the FBI. The flat impressions will be segmented and used to create a 10 print flat technical image search and the rolled impressions will be used to create a 10 print rolled technical image search. Both transactions will be processed and the data will be collected and analyzed.

The fourth component is NIST testing that's being conducted. NIST will use a copy of the IAFIS prototype system for testing 10 flats versus 10 rolled prints. They plan to complete this report within 60 days.

The fifth and final component of the NFACS relates to latent testing which will be done by the FBI Laboratory Division. They will identify the impact of latent search capabilities based on the collection of flat prints as opposed to rolled prints for noncriminal justice applicant background checks. 300 latent examples have been provided to the Laboratory Division and will be searched against a data base consisting of the same 300 subjects and their respective 10 flat prints. Actual testing is anticipated to start within the next few months.

***Compact Council Action:* This topic was accepted as information only.**

Topic #11 Review of the Guidelines for Improved Automated Criminal History Record Systems for Effective Screening of Personnel

and

Reliability of Centralized Criminal Record Repository checks in Lieu of Local Criminal Justice Agency Checks in Four U.S. States: California, Florida, Pennsylvania, and Indiana

This topic was presented by Dr. Kelly Buck, Social Science Analyst with the Department of Defense. In January 2002, Dr. Buck provided an overview to the Compact Council on a study being conducted through the Defense Personnel Security Research Center (PERSEREC).

Dr. Buck requested that the Council provide feedback on a draft document entitled, *Guidelines for Improved Automated Criminal History Record Systems for Effective Screening of Personnel*. The document was prepared for the Private Sector Liaison Committee of the International Association of Chiefs of Police. Its purpose is to bring together into one document an overview of the prevailing recommendations pertaining to the collection, management, dissemination, and use of criminal history record information records for screening personnel for positions of trust.

The second document Dr. Buck presented was a study titled *Reliability of Centralized Criminal Record Repository Checks in Lieu of Local Criminal Justice Agency Checks in Four U.S. States: California, Florida, Pennsylvania, and Indiana*. The study examines the consistency of information available between local, state, and national repositories of criminal records. To the extent that information is consistent, checks of centralized repositories could replace most of the tens of thousands of Local Agency Checks (LAC) that are now conducted in the course of security clearance background investigations. In the event local criminal justice agency information is inaccessible via central repository checks, alternative sources of information for indicating where LACs should be conducted were explored. These included self-reporting by subjects on their electronic personnel security questionnaires and identification of cases having some other kind

of adverse information that would justify conducting LACs.

Dr. Buck provided the following brief synopsis of study findings to the Compact Council:

Based upon comparisons of the results of LACs to checks of the state central repository and the FBI's National Crime Information Center Interstate Identification Index (NCIC III), the degree to which evidence of criminal conduct would be lost if centralized repository checks were used in lieu of LACs depended both on the type of criminal conduct and on the agency originating arrest and/or conviction information.

■ State and the national NCIC III repositories together identified approximately 70% of offense information found through LACs in California, 89% of the information found through LACs in Florida, and 85% of the offenses identified through LACs in Pennsylvania. The Indiana state repository in combination with the NCIC III, however, identified only 32% of the offense information surfaced through LACs in that state.

■ For all types of offenses that can be identified through LACS, the California repository identified 43.3%, the Florida state repository identified 61.2%, and the Pennsylvania state repository identified 41.4%. Only 18.8% of the offense information found through Indiana LACs could be identified via checks of the Indiana state repository.

■ Name-based state repository checks can potentially identify an additional 2 to 3.5% of subjects believed not to have criminal records based on LACs. This can translate to as much as one-fourth of the criminal offender population.

■ The extent to which name-based state repository checks and/or NCIC III checks identified offenses found through LACs varied significantly between reporting agencies within California and within Florida.

■ Of 598 subjects for whom LACs identified felony arrests, 29%

self-reported felony arrests or convictions on their Standard Form 86, Questionnaire for National Security Positions (SF-86). Of 40 subjects known through LACs to have some kind of nonfelony firearm or explosives-related arrest or conviction, 40% self-reported these arrests on their SF-86. Approximately half (51.3%) of the 199 subjects with nonfelony drug offenses self-reported, whereas 69% of the 1,135 subjects with nonfelony alcohol-related offenses self-reported.

■ Using information from state repository checks, checks of the NCIC III, subject self-reports, and other adverse information from the EPSQ, between 78 (Indiana) and 89% (California) of subjects known through LACs to have criminal records will be identified as having at least one criminal record, although LACs in all places where they lived, worked, or went to school for 6 months or more would have to be conducted to surface all of their offense information.

See Attachment 11 for a copy of the meeting handout.

Compact Council Action: This topic was accepted as information only.

Topic #12 Ten Print/Hot Check

Ms. Kim Smith, Unit Chief, FBI CJIS Criminal Information and Transition Unit, presented this topic. She stated that a large number of contributors who submit fingerprint cards, particularly noncriminal justice cards, assume that their submissions are searched against Integrated Automated Fingerprint Identification System (IAFIS) and NCIC. Contributors submitting IAFIS ten-print transactions rely on the responses generated from IAFIS to contain comprehensive criminal information. Under current processing, checks against the NCIC database are not being conducted for IAFIS ten-print submissions; unless a FBI number is included in the wanted person entry. It is expected that the importance of these checks will increase as individuals begin to submit fingerprint images to IAFIS as required by various homeland security legislative mandates, i.e, Patriot Act, Aviation and Transportation Security Act, Bioterrorism Response Act, etc.

Currently, the NCIC Wanted Person and Convicted Sexual Offender Registry (CSORF) Files will send an Administrative Message to IAFIS to post a wanted notice or registered sex offender notice if the FBI Number is entered in the NCIC record. Sixty percent of the Wanted Person File has an FBI Number entered in the record. The FBI Number is mandatory for the CSORF, therefore one-hundred percent of the CSORF records have an FBI Number. (The FBI Number is mandatory for the CSORF due to the fact that the FBI is required by law to check all National Child Protection Act fingerprint submissions against the CSORF and a prior conviction is a prerequisite.)

During the Fall 2002 round of Advisory Process meetings, it was proposed that to ensure that a comprehensive response is returned to IAFIS ten-print submissions, a fully automated cross search be conducted of NCIC persons files for all criminal and all civil IAFIS ten-print submissions, including those transactions that have been identified and non-identified. A concept of operations was offered along with significant challenges that arise with this type of search, the greatest of which was the issue of mixing name-based information with positive fingerprint identification and the resultant false identification and/or inappropriate action. It was also pointed out that a voluminous hit rate could occur (The Wanted Person File hit rate is currently 21 percent, translating to about 8,000 hits for every 40,000 fingerprint submissions, per day) as well as concerns regarding state laws that may prohibit dissemination of NCIC information for these types of searches. Another difficult issue that arises is the matter of whom to notify in the case of civil submissions.

As an interim work around, an automated solution can be developed. All Violent Gang and Terrorist Organization File (VGTOF) terrorist records have been manually entered in IAFIS to create temporary name only records. All adds, updates and deletes are updated on a daily basis. A manual notification process has been developed and implemented to handle all possible name matches. CJIS personnel notify the Originating Agency (ORI) of record (FBI Field Office) as well as the FBI Terrorism Watch List Unit. No filtering of possible hits occurs. This short term strategy

will continue until an automated solution can be developed.

Ms. Smith mentioned that the automatic NCIC check will be implemented in two phases. Phase One is scheduled to be completed by September 30 of 2003. Phase Two would probably be implemented 6-8 months after Phase One. Ms. Smith next presented the options for both Phase One and Phase Two Criminal, and Civil Ten-print Submissions.

Lt. Col. Jeff Harmon commented that it would be useful, as CJIS develops this, to coordinate with the Joint Task Force on Rap Sheet Standardization, since many states have either adopted or are moving towards the Standardized Rap Sheet. CJIS staff was asked to ensure proper elements are in place in the standardized rap sheet to support the Ten Print/Hot Check. A question was also raised as to whether probation and parole violators meet the criteria for the Wanted Person File or the Convicted Supervised Release File and if a subject is entered in the Supervised Persons File as a violator does that mean they are wanted. Ms. Robin Stark, Unit Chief, CJIS Audit Unit, provided the following responses: First she said that a probation violator can be entered into the Wanted Person File as long as the original offense is a felony, federal crime or serious misdemeanor, because that's the criteria for entering into the Wanted Person File. The probation violator can be entered into the person's Unsupervised Release File as long as the original offense meets that criteria and it's a federal offense, felony, or serious misdemeanor and the person was placed under specific criteria. The person is not considered Wanted, but if they were stopped on a charge, then the officer could take appropriate action. The entry criteria for the probation violator is the same in the Unsupervised Persons File as it is in the Wanted Person's File.

Council members were asked to review the proposals and provide concurrence with Phase One and then provide comments and recommendations for options laid out in Phase Two. Ms. Smith mentioned that in conjunction with the reorganization of the CJIS Programs Development Section, the Compact Council is now under her direction and she offered continued support and assistance from her unit.

Compact Council Action: This topic was accepted as information only.

Topic #13 Authorized Dissemination of Criminal History Record Information Predicated Upon State "Umbrella" Statutes

Mr. Danny Moye, CJIS Access Integrity Unit (AIU), presented this topic. The October 21, 2002, CJIS information letter was provided to give the history of "Umbrella" statutes and how some states utilized these statutes to allow local governmental entities the flexibility to quickly put licensing and employment background record checks into motion. (See Attachment 12).

Mr. Moye reported five criteria used to review the state statutes (See Attachment 13). One, it has to be a legislative action. Second, fingerprints are always required. Third, these fingerprints have to be submitted to the CJIS Division of the FBI. The results of the criminal history record check goes back to a governmental entity. The last requirement is that a specific category of applicants or licensees have to be identified.

Three jurisdictions (Arizona, Idaho, Virginia) have passed state statutes, approved by the Attorney General, that allow local authorities to determine what occupations should be criminally backgrounded and have given greater flexibility for access to criminal history records to their county and municipal governments. For Virginia, it's pretty much limited to firearms transfers but for Arizona and for Idaho, it's a very broad concept. States have the flexibility to tailor such a dissemination or delegation of access to criminal history records.

A couple of advantages of the "Umbrella" statutes are that if a local and county government wanted to react to a particular type of situation, maybe a natural disaster or some type of hot topic that it had, it could react very fast. It wouldn't have political considerations that might be present for the other parts of the state and it could pass an ordinance and send that to the CJIS AIU for review. The CJIS AIU could do a very fast turn around to see whether or not it meets the criteria. If it meets the criteria, it would

be implemented within days rather than months or years.

Compact Council Action: This topic was accepted as information only.

Topic #14 Amendment to the Delayed Fingerprint Submission Rule Applicable to Emergency Situations Related to Homeland Security

The Council received a request from the Transportation Security Administration (TSA) to submit a proposal under the Delayed Fingerprint Submissions Rule. TSA's concern was that they do not have an adequate infrastructure in place to do fingerprint based checks. A conference call, during the Council meeting, took place with Admiral James Loy, TSA Administrator, Mr. Justin Oberman, Project Manager/TSA, and Mr. Kirk VanTine, DOT General Counsel. The TSA request was to obtain a 90 to 120-day period that would allow them to obtain the necessary infrastructure to do the fingerprint-based checks. After a long discussion, TSA presented a proposal for the Council to review.

The Council stated TSA in general had submitted an acceptable proposal and understood the nature of the emergency need and the request for a grant of authority to utilize the delayed fingerprint submission and access III. The Council was concerned that the proposal might be interpreted as a waiver and not a proposal to delay the fingerprint submission. The Council stated its firm commitment to ensuring a one to one relationship between each initial name check and the subsequent fingerprint. TSA agreed to provide regular briefings to the Council as the process is rolled out. TSA will also provide statistics to the Council on the results of the checks. The Council also questioned the term of use and suggested a sunset provision be included to provide this as a mechanism during the transition phase, as TSA worked through its infrastructure issues. Other Council members were curious if TSA envisions the use of a "Notice of Intent" to the applicant. The Council strongly endorsed a series of discussions to ensue facilitation of a strategy for a national deployment. Further the Council recommended including representation from the Council, the FBI and state repositories, Department of Motor Vehicles and

other affected parties in the discussions for a national strategy.

Compact Council Action: Lt. Col. Jeff Harmon made a motion to accept the proposal (See Attachment 14), as presented by TSA, with the amendments discussed during the conference call. The motion was seconded by Ms. Winona Varnon.

The motion carried.

Subsequent to the meeting, there was a March 13, 2003 teleconference to discuss the TSA proposal. A more realistic time frame for the submission of fingerprints was agreed upon. See Attachment 15 for the revised proposal.

Attachment #1

COMPACT COUNCIL MEETING SCOTTSDALE, AZ FEBRUARY 25-26, 2003

GALLERY ATTENDEE LIST

Mr. Pat Adams, FBI CJIS
Mr. Gary Barron, FBI CJIS
Mrs. Paula A. Barron, FBI CJIS
Ms. Deborah G. Browning, Defense Security Service
Dr. Kelly Buck, Department of Defense
Ms. Paula E. Cackowski, FBI CJIS
Mr. William Casey, (FBI CJIS Advisory Policy Board) Boston
Police Department
Mr. Gary Cooper, SEARCH
Ms. Marie Bernoi-Coulter, FBI CJIS
Mr. Kevin Corr, FBI CJIS
Ms. Elaine Cropper, Cropper & Associates
Mr. Michael Dalton, Florida Department of Children and Families
Mr. James Gray, FBI CJIS
Mr. Owen Greenspan, SEARCH
Mr. Bobby P. Hamil, Jr., FBI CJIS

Mr. Ron Hawley, SEARCH
Ms. Pam Henderson, FBI CJIS
Ms. Janet Jessup, Northrop Grumman
Mr. Eric Juttelstad, Lockheed Martin
Ms. Lori Kemp, FBI CJIS
Mr. Maurice King, Washington State Patrol
Ms. Susan Kitchen, Colorado Bureau of Investigation
Mr. Eric Lapp, National Background Check, Inc.
Ms. Julie A. LeTourneau, Minnesota Bureau of Criminal
Apprehension
Mr. Robert W. McKeever, Maryland Department of Public Safety
and Correctional Services
Mrs. Cathy Morrison, FBI CJIS
Mr. Danny R. Moye, FBI CJIS
Mrs. Kathleen A. Oldaker, FBI CJIS
Mrs. Kimberly S. Parsons, FBI CJIS
Ms. Sabrina Price, Transportation Security Administration
Mr. Marcel D. Reid, Illinois State Police
Mr. Daryl Riersgard, Nevada Department of Public Safety
Ms. Pam Ritchey, Iowa Department of Public Safety
Mr. Bruce Seiber, Sagem Morpho
Ms. Kimberly K. Smith, FBI CJIS
Ms. Robin A. Stark, FBI CJIS
Mr. Monte C. Strait, FBI CJIS
Mr. William Taylor, Ohio Bureau of Criminal Identification &
Investigation
Mr. Richard Thomas, Arkansas Crime Information Center
Mr. Michael Timmerman, Arizona Department of Public Safety
Ms. Barbara S. Wiles, FBI CJIS
Mr. Fred Witte, Honolulu Police Department
Mr. Paul L. Woodard, SEARCH
Mr. Jon Williams, FBI CJIS
Lt. Michael Woodson, Connecticut State Police
Ms. Martha Wright, Florida Department of Law Enforcement

Attachment #2

Cathy Morrison

From: "Yvonne Munoz" <Yvonne.Munoz.@doj.ca.gov>

To: cmorriso@leo.gov>
Cc: "Doug Smith" <Doug.Smith@doj.ca.gov>; "Gary Cooper" <Gary.Cooper@doj.ca.gov>; Tina Medich" Tina.Medich@doj.ca.gov
Sent: Thursday, February 20, 2003 4:31 PM
Subject: Letter of December 23, 2002

This message is in response to the letter from Mr. Wilbur Rehmann,
Chairman, Compact Council regarding the time frame for processing and transmitting fingerprints to the FBI subsequent to a III check for emergency procurement purposes. After reviewing a sample of transactions, the California Department of Justice (DOJ) is confident that the current time frame of 1-5 days is a sufficient period of time to cover all of our fingerprint processing steps. As you are aware, California processes all fingerprints electronically and normally transmits the transactions to the FBI within a very short period of time after they are received. Please contact me if I can be of any further assistance to you in this matter.

Paul Johnson, Manager
Applicant and Processing Program
California Department of Justice

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Attachment #3

BILLING CODE: 4410-02

COMPACT COUNCIL

**NATIONAL CRIME PREVENTION AND PRIVACY
COMPACT**

28 CFR Chapter IX

[NCPPC 103]

RIN

**Compact Council Procedures for Compliant Conduct and
Responsible Use of the Interstate Identification Index (III)
System for Noncriminal Justice Purposes**

AGENCY: National Crime Prevention and Privacy Compact
Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council, established pursuant to the
National Crime Prevention and Privacy Compact (Compact), is
publishing a rule to establish a procedure for ensuring compliant
conduct and responsible use of the Interstate Identification Index
(III) System for noncriminal justice purposes as authorized by
Article VI of the Compact.

DATES: Written comments must be submitted on or before
[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION
IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed
rule to the FBI's Compact Officer at Criminal Justice Information
Services Division, Attn: FBI Compact Officer, 1000 Custer Hollow
Road, Module C-3, Clarksburg, WV 26306; comments may also be
faxed to (304) 625-5388.

FOR FURTHER INFORMATION CONTACT: Ms. Donna
Uzzell, Compact Council Sanctions Committee Chairman, Florida
Department of Law Enforcement, 2331 Philips Road, Tallahassee,

FL 32308-5333, telephone number (850) 410-7100.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-16, establishes uniform standards and procedures for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999 when ratified by the second state. The Compact provides for the expeditious provision of Federal and State criminal history records to governmental and nongovernmental agencies that use such records for noncriminal justice purposes authorized by pertinent Federal and State law, while simultaneously **enhancing** the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

To carry out its responsibilities under the Compact, the Compact Council is authorized under Article III and Article VI to establish and adhere to III System rules, procedures and standards concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection and other aspects of III System operation for noncriminal justice purposes. Access to records is conditional upon the submission of the subject's fingerprints or other approved forms of positive identification with the record check request as set forth in Article V of the Compact. Further, any record obtained under the Compact may be used only for the official purposes for which the record was requested.

Article III(a) of the Compact requires the Director of the FBI to appoint a Compact Officer to administer the Compact within the Department of Justice and to ensure that Compact provisions and Compact Council rules, procedures and standards are complied with by DOJ and other federal agencies and other agencies and organizations that submit search requests to the FBI. Article III(b) requires each Party State to appoint a Compact Officer who shall administer the Compact within the state, ensure that Compact provisions and Compact Council rules, procedures and standards are complied with, and regulate the in-state use of records received by means of the III System from the FBI or from other Party States.

BACKGROUND:

The Compact Council is establishing this rule to protect and enhance the accuracy and privacy of III System records, to ensure that only authorized access to records is permitted, and to ensure that records are used and disseminated only for particular authorized noncriminal justice purposes. The procedures established by the rule will be used in determining compliant conduct and responsible use of III System records and in addressing any violations that may be detected.

This rule acts as public notice that unauthorized access to the III System for noncriminal justice purposes or misuse of records obtained by means of the system for such purposes may result in the imposition of sanctions by the Compact Council, which may include the suspension of noncriminal justice access to the III System should the violation be found egregious or constitute a serious risk to the integrity of the System.

Pursuant to the rule, the FBI Criminal Justice Information Services (CJIS) Division staff will regularly conduct systematic compliance audits of state repositories and selected user agencies. An independent audit team will be established to conduct periodic audits of the FBI and agencies that submit record check requests to the FBI under federal authority. The Compact Council and its Sanctions Committee intend to work in concert with the CJIS Advisory Policy Board's (APB) Ad Hoc Sanctions Subcommittee to examine findings from CJIS staff audits and determine the proper arbiter over the sanctions process for each finding or instance of violation. The APB will continue to serve in its role as an advisor to the FBI, which has exclusive jurisdiction in matters regarding the use of the III System for criminal justice purposes. This advisory capacity includes recommending sanctions to the FBI Director related to violations by criminal justice agencies using the III System for criminal justice purposes. If it is determined that a sanction should be imposed on a criminal justice agency for misusing the III System for a noncriminal justice purpose, the Compact Council will request that the Director of the FBI take appropriate action.

In determining applicable actions or sanctions for noncompliance with Compact provisions or Compact Council rules, the Compact Council shall take into consideration: (1) any meritorious, unusual or aggravating circumstances, which affect the seriousness of the violation; (2) circumstances that could not reasonably have been foreseen by the FBI, state repository, user agency, or others; and (3) the nature and seriousness of the violation, including whether it was intentional, technical, inadvertent, committed maliciously, committed for gain, or repetitive. A pattern or practice of noncompliance by an agency may be grounds for the imposition of sanctions. The Council may evaluate relevant documentary evidence available from any source.

If, as a result of a compliance review or on the basis of other credible information, the Compact Council determines that an agency is not operating in accordance with the Compact and applicable rules, procedures and standards, prompt notice will be given of the nature of the noncompliance and the possible consequences of failure to take effective corrective action. A concerted effort will be made to persuade the agency to comply voluntarily. Efforts to secure voluntary compliance will be undertaken at the outset in every noncompliance situation and will be pursued through each stage of corrective action. However, where a noncompliant agency fails to provide adequate assurance of compliance or apparently breaches the terms of such assurance, the Compact Council will impose sanctions or require corrective action necessary to ensure compliance. The Council will be flexible in determining what corrective actions or sanctions are appropriate and generally will require the minimal action or impose the least severe sanction necessary to ensure compliance and deter violations.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council established by the National Crime Prevention and Privacy Compact, an interstate/federal-state compact which was enacted into federal law by Congress pursuant to Pub. L. 105-251, 42 U.S.C. 14611-16.

The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes.

The Compact Council is not a federal agency as defined in the Administrative Procedures Act. Accordingly, rulemaking by the Council pursuant to the Compact is not subject to the Act. However, the Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the Federal Register. See 42 U.S.C. §14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. §3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. §3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this Rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 901

Privacy, Accounting (02, 08), see also Auditing

For the reasons set forth above, the National Crime Prevention and Privacy Compact Council proposes to reserve parts 902, 903, and 904 and add Part 905 to 28 CFR Chapter IX to read as follows:

**CHAPTER IX--NATIONAL CRIME PREVENTION AND
PRIVACY COMPACT COUNCIL**

Part

**905 Compact Council Procedures for Compliant Conduct and
Responsible Use of the Interstate Identification Index (III) for
Noncriminal Justice Purposes**

**PART 905-- COMPACT COUNCIL PROCEDURES FOR
COMPLIANT CONDUCT AND RESPONSIBLE USE OF
THE INTERSTATE IDENTIFICATION INDEX (III)
SYSTEM FOR NONCRIMINAL JUSTICE PURPOSES**

Sec.

905.1 Purpose and authority.

905.2 Applicability.

905.3 Assessing compliance.

905.4 Methodology for resolving noncompliance.

905.5 Sanction adjudication.

**PART 905-PROCEDURE FOR NONCOMPLIANT USE OF
THE INTERSTATE IDENTIFICATION INDEX (III) SYSTEM
FOR NONCRIMINAL JUSTICE PURPOSES**

§905.1 Purpose and authority.

The purpose of the rule is to establish policies and procedures to insure that use of the III System for noncriminal justice purposes

complies with the Compact and with rules, standards and procedures established by the Compact Council regarding application and response procedures, record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation for noncriminal justice purposes. The rule is established pursuant to Article VI of the Compact, which authorizes the Compact Council to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes. The rule seeks to require responsible authorized access to the system and use of records obtained by means of the system. It provides a comprehensive procedure for a coordinated compliance effort between the Compact Council, the FBI, and local, state and federal government agencies, and encourages the cooperation of all affected parties.

§ 905.2 Applicability.

This rule applies to access to the III System for noncriminal justice purposes and the use of information obtained by means of the system for such purposes. The rule establishes procedures for ensuring that the FBI and the criminal history record repositories of Compact party states carry out their responsibilities under the Compact, as set out in the National Fingerprint File (NFF) Qualification Requirements, and that federal, state and local agencies that use the III System for noncriminal justice purposes comply with the Compact and with applicable Compact Council rules.

§ 905.3 Assessing Compliance.

(a) The FBI CJIS staff shall regularly conduct systematic reviews of state repositories. These reviews may include, as necessary, reviews of III System user agencies, including (1) governmental and nongovernmental noncriminal justice entities that submit fingerprints to the state repositories and (2) criminal justice and noncriminal justice entities with direct access to the III System. An independent audit team shall periodically audit the FBI. These reviews may include, as necessary, the (3) governmental and nongovernmental noncriminal justice agencies authorized to submit fingerprints directly to the FBI.

The reviews may consist of systematic analyses and evaluations, including on-site investigations, and shall be as comprehensive as necessary to establish compliance with the Compact and with III System rules, procedures and standards, or to establish that a violation has occurred. Violations may also be reported or detected independently of a review.

(b) The FBI CJIS staff or the independent audit team established to review the FBI shall prepare a draft audit report describing the nature and results of each review and setting out all findings of compliance and noncompliance, including any reasons for noncompliance and the circumstances surrounding the noncompliance. If the audited agency is the FBI or another federal agency, the draft audit report shall be forwarded to the Compact Officer of the FBI. If the audited agency is a state agency in a party state, the draft audit report shall be forwarded to the Compact Officer of the state. If the audited agency is a state agency in a non-party state, the draft audit report shall be forwarded to the chief administrator of the state repository.

(c) The Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a non-party state shall be afforded the opportunity to forward comments and supporting materials to the FBI CJIS staff or to the independent audit team.

(d) The FBI CJIS staff or the independent audit team shall review any comments and materials received and shall incorporate applicable revisions into a final audit report. The final audit report shall be provided to the Compact Officer or state repository chief administrator to whom the draft audit report was sent. If the audited agency is a state agency, a copy of the report shall be provided to the FBI Compact Officer. If the audited agency is being audited for the first time, the letter transmitting the audit report shall state that no action will be taken regarding any deficiencies set out in the report, but that the deficiencies must be remedied before the agency is audited again and failure to do so will result in the initiation of remedial action pursuant to section 905.4.

905.4 Methodology for resolving noncompliance.

(a) Subsequent to each compliance review that is not a first-time review of the audited agency, the final audit report shall be forwarded to the Compact Council Sanctions Committee (Sanctions Committee). The Sanctions Committee shall review the report and, if it concludes that no violations occurred that are serious enough to require further action, it shall so advise the Compact Council Chairman. The Chairman shall write a letter to this effect to the FBI or party state Compact Officer or the chief administrator of the state repository in a non-party state. If the audited agency is a state agency, a copy of the letter shall be provided to the FBI Compact Officer.

(b) Should the Sanctions Committee conclude that a violation has occurred that is serious enough to require redress, the Committee shall recommend to the Compact Council a course of action necessary to bring the offending agency into compliance and provide assurances that minimize the probability that subsequent violations will occur. In making its recommendation, the Sanctions Committee shall consider the minimal action necessary to insure compliance or shall explain why corrective action is not required. This may include, but not be limited to, requiring a plan of action by the offending agency to achieve compliance, with benchmarks and performance measures, and/or requiring the agency to seek technical assistance to identify sources of the problem and proposed resolutions. If the Compact Council approves the Committee's recommendations, the following progressive actions shall be initiated:

(1) The Compact Council Chairman shall send a letter to the Compact Officer of the FBI or party state or the chief administrator of the state repository in a non-party state identifying the violations and setting out the actions necessary to come into compliance. The letter shall state that if compliance is not achieved and assurances provided that minimize the probability that subsequent violations will occur, and non-compliance is not excused, the Compact Council may authorize the FBI to refuse to process requests for criminal history record searches for noncriminal justice purposes from the offending agency and, if the offending agency is a criminal justice agency, may request the Director of the FBI to take

appropriate action against the agency consistent with the recommendations of the Council. The letter shall direct the Compact Officer or state repository chief administrator to submit a response in writing to the Compact Council Chairman within 30 calendar days from the date of the letter, unless the Compact Council requires a more expeditious response. If the audited agency is a state agency, a copy of the Compact Council Chairman's letter shall be provided to the FBI Compact Officer.

The response letter shall outline a course of action to be undertaken by the offending agency to correct the deficiencies and provide assurances that minimize the probability that subsequent violations will occur. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(2) If the Sanctions Committee deems the response to the letter to be insufficient, or if no response is received within the allotted time, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, it shall direct the Compact Council Chairman to send a letter to the Director of the FBI (if the audited agency is the FBI or another federal agency) or to the head of the state agency in which the state repository resides (if the audited agency is a state agency), requesting assistance in correcting the deficiencies. The letter shall state that the agency is being placed on probationary status. A copy of the letter shall be sent to the appropriate Compact Officer or state repository chief administrator. If the audited agency is a state agency, a copy of the letter shall be provided to the FBI Compact Officer.

A response to the letter shall be required within 20 calendar days from the date of the letter, unless the Compact Council requires a more expeditious response. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(3) If the Sanctions Committee deems the response to be insufficient, or if no response is received within the allotted time, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, it shall

direct the Compact Council Chairman to send a letter to the U. S. Attorney General (if the audited agency is the FBI or another federal agency) or to the elected state official who has oversight of the department in which the state repository resides (if the audited agency is a state agency), requesting assistance in correcting the deficiencies. If the elected state official is not the Governor, a copy of the letter shall be sent to the Governor. A copy of the letter shall also be sent to the FBI Compact Officer and (if the audited agency is a state agency) to the state Compact Officer or state repository chief administrator in a non-party state. The letter shall state that a response is required within 20 calendar days of the date of the letter, and that if a sufficient response is not received within that time, sanctions may be imposed that could result in suspension of the offending agency's access to the III System for noncriminal justice purposes. The Chairman shall refer any response received to the Sanctions Committee for appropriate action.

(4) If no response is received within the allotted time, or if the Committee deems the response to be insufficient, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, it shall direct the Compact Council Chairman to request the FBI Compact Officer to take appropriate action to suspend noncriminal justice access to the III System by the offending agency. If the offending agency is a criminal justice agency, the Chairman shall request the Director of the FBI to take appropriate action to suspend noncriminal justice access to the III System by the agency.

(5) Reinstatement of full service by the FBI shall occur after the Compact Officer of the FBI or a party state or the chief administrator of the state repository in a non-party state provides to the Compact Council Chairman and the Sanctions Committee satisfactory documentation that the deficiencies have been corrected or a process has been initiated and approved by the Compact Council Chairman and the Sanctions Committee to correct the deficiencies. If the Committee approves the documentation in consultation with the Compact Council Chairman, the Compact Council Chairman shall request the FBI Compact Officer to take appropriate action to reinstate full

service. Letters to this effect shall be sent to all persons who have previously received letters relating to the deficiencies and resulting suspension of service. The decision to reinstate full service shall be considered by ratification by the Compact Council at its next regularly scheduled meeting.

(c) For good cause, the Compact Council Chairman shall be authorized to extend the number or days allowed for the responses required by Subsections (b)(1-3) of this Section.

905.5 Sanction adjudication.

A Compact Officer of the FBI or a party state or the chief administrator of the state repository in a non-party state may dispute a sanction under this Part by asking the Compact Council Chairman for an opportunity to address the Compact Council. The Compact Council may refer unresolved disputes concerning such matters to the Dispute Adjudication Committee pursuant to Article XI. Nothing prohibits the Compact Council from requesting the FBI to exercise immediate and necessary action to preserve the integrity of the III System pursuant to Article XI(b).

Dated: _____

Wilbur Rehmann
Compact Council Chairman

Attachment #4

Agreement between the U.S. Department of Housing & Urban Development and the U.S. Department of Justice Regarding Access to National Crime Information Center Data

Introduction and Purpose

In March 1996, Congress passed the Housing Opportunity Program Extension Act of 1996 (Extension Act). The Extension Act gives public housing authorities (PHAs) new authority and obligations regarding screening and evictions. The Extension Act also requires the Department of Justice (DOJ), police departments

and other law enforcement entities to make criminal conviction records available to PHAs upon request and payment of reasonable costs for purposes of screening, lease enforcement and eviction.

DOJ is working as HUD's partner to assure effective implementation of the Act. DOJ and HUD specifically recognize the importance of providing a simple and workable means of PHA access to NCIC data as part of the screening process, as well as the need for safeguards to ensure proper data use and confidentiality.

Accordingly, HUD and DOJ agree to the following provisions to facilitate proper and effective use of NCIC data. This agreement will remain in effect for six months from the date of the signing of this agreement. After six months, representatives from HUD, PHAs, DOJ, and the Federal Bureau [of] Investigation (FBI), will evaluate the efficacy of this agreement with a view toward making it permanent.

Procedures for Access to Criminal History Data

State or local law enforcement agencies are permitted access through the National Crime Information Center (NCIC) System to the Interstate Identification Index (III) for the purpose of determining whether a tenant of or applicant for public housing has a criminal history record indexed in the III. Access for this purpose does not entitle the requesting law enforcement agency to obtain the full content of automated records through III. To obtain the full content of a criminal history record, the PHA shall submit a separate request accompanied by a fingerprint card to the Identification Records Section of the Federal Bureau of Investigation, and shall pay a reasonable fee, as provided below.

To determine whether the PHA needs to obtain a full criminal history record, appropriate state and local law enforcement agencies are authorized to use their NCIC access to perform name checks. These state and local law enforcement agencies are authorized to inform a PHA whether a name check reveals that a public housing applicant may have a criminal history record index in the III. Such name checks are authorized for adults or for juveniles to the extent the release of such information is authorized

under applicable state, local or tribal law.

If the state or local law enforcement agency informs the PHA that the name check reveals no additional information in the NCIC file for the name, birth date and social security number given by the public housing applicant, the PHA will not pursue further inquiries.

If the state or local law enforcement agency indicates that there is a criminal history record under the name, birth date and social security number given by the public housing applicant, the PHA will refer the applicant to the state or local law enforcement agency for fingerprinting (or otherwise arrange for fingerprinting). The law enforcement agency then will send the fingerprints to the Federal Bureau of Investigation (FBI) for expeditious processing.

Fees

PHAs will pay a reasonable fee for the processing of each applicant fingerprint card.

Records Management

The Extension Act provides that each PHA shall establish and implement a system of records management that ensures that criminal records are maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which the record was requested has been accomplished. HUD is charged statutorily with the regulation of PHAs and will take appropriate regulatory steps with respect to implementation of this Extension Act provision.

Dissemination

DOJ will ensure that all appropriate parties are promptly informed of the provisions of his agreement.

____/s/_____
____/s/_____

Henry G. Cisneros
Janet Reno

Secretary
Attorney General
United States Department of
United States Department of Justice
Housing and Urban Development

May 29, 1996

Attachment #5

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 140--CRIMINAL JUSTICE IDENTIFICATION, INFORMATION,
AND COMMUNICATION
SUBCHAPTER II--EXCHANGE OF CRIMINAL HISTORY RECORDS FOR
NONCRIMINAL JUSTICE
PURPOSES

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Current through P.L. 106-180, approved 03-17-2000

§ 14614. Effect on other laws

(a) **Privacy** Act of 1974

Nothing in the **Compact** shall affect the obligations and responsibilities of the FBI under section 552a of Title 5 (commonly known as the "**Privacy** Act of 1974").

(b) Access to certain records not affected

Nothing in the **Compact** shall interfere in any manner with--

(1) access, direct or otherwise, to records pursuant to--

(A) section 9101 of title 5, United States Code;

(B) the **National** Child Protection Act [42 U.S.C.A. § 5119 et seq.];

(C) the Brady Handgun Violence Prevention Act (Public Law 103-159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973

Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544 (86 Stat. 1115)).

(d) Federal Advisory Committee Act

The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) Members of Council not Federal officers or employees

Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed--

Attachment #6

42 United States Code § 1437d

* * *

(q) Availability of records

(1) In general

(A) Provision of information

Notwithstanding any other provision of law, except as provided in subparagraph (C), **the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.**

* * *

(2) Opportunity to dispute

Before an adverse action is taken with regard to assistance under this subchapter on the basis of a criminal record, the public housing agency shall provide the tenant or applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(3) Fees

A public housing agency may be charged a reasonable fee for information provided under paragraph (1). In the case of a public housing agency obtaining information pursuant to paragraph (1)(B) for another owner of housing, **the agency may pass such fee on to the owner initiating the request** and may charge additional reasonable fees for making the request on behalf of the owner and taking other actions for owners under this subsection.

* * *

Attachment #7

February 25, 2003

REPORT AND PROPOSAL OF THE COMPACT COUNCIL AD HOC CFR COMMITTEE ON OUTSOURCING AND OR PRIVATIZATION OF THE USE OF THE III SYSTEM FOR NONCRIMINAL JUSTICE PURPOSES

The Ad Hoc CFR Committee submits this Report on outsourcing and or privatization of the use of the III system for noncriminal justice purposes following e-mail exchanges, telephone conversations, and meetings during 2002. A preliminary proposal was presented to the Compact Council at its May 2002 meeting but following input, discussion, and suggestions by the Council no official was taken by it. On June 4, 2002 and again on December 3, 2002, the Ad Hoc Committee also met with the Chairman and Vice Chairman of the Council, Chairman and Vice Chairman, other selected representatives of the CJIS Advisory Policy Board (APB),

and the FBI to discuss and develop it.

The proposal being presented to the Compact Council at the February 2003 meeting reflects the discussion, suggestions, and changes made at the December 3, 2002 meeting.

OVERVIEW AND GENERAL COMMENT

With differences noted in the Report, the proposal generally reflects in concept and approach recommended by the APB, adopted by the FBI, and incorporated into the October 28, 1999 amendments to the Code of Federal Regulations (CFR). These amendments authorize outsourcing and privatization of the dissemination and use of criminal history record information (CHRI) in the III system for criminal justice purposes. It also reflects the core principles set out in the "White Paper" adopted by the APB dated March 17, 2000, and distributed by the FBI to all Control Terminal Officers, Federal Service Coordinators, and State Identification Bureau Directors.

Introductory clause.

The introductory clause differs substantively from the 1999 CFR amendments. It does not authorize direct terminal access to the National Identification Index and CHRI in the III system by an entity with whom an agreement is executed under this proposal.

Paragraph (a)

Paragraph (a) "tracks" the process for outsourcing a noncriminal justice function similar to the language in 28CFR 20.33(a)(6) concerning one governmental agency outsourcing an administration of criminal justice function to another governmental agency. This follows the "scenario" set out by the Vice-Chairman, Lt. Colonel Jeff Harmon at the May 2002 meeting. As he proposed at the meeting, the Maine Department of Education might, for example, want to contract with the Department of Labor to process and screen the results of criminal record checks on teachers pursuant to an approved 92-544 statute.

Another substantive difference from the 1999 CFR amendments concerns the use and "placement" of security and confidentiality matters. Because it similarly affects both paragraphs, this issue is dealt with separately in this report. Suffice to say the Committee was not charged with the responsibility of preparing any document on security and confidentiality matters.

Paragraph (b)

Paragraph (b) generally "tracks" the process for privatization of a noncriminal justice function similar to the language in 28CFR 20.33(a)(7). It would authorize agreements to be executed with private contractors or non-profit organizations acting on behalf of a governmental agency, or in the absence of a governmental agency, acting on behalf of an authorized entity. This paragraph deals primarily with privatization with the added use of channeling entities.

Security and Management Controls and Standards.

Substantively different from the 1999 CFR amendments concern the "placement" of security and management controls and standards. Unlike the 1999 CFR amendments but upon the recommendation of the FBI CJIS Office of Contract Administration, there is no reference to a security addendum in the proposal. The Office strongly recommends that there be no such addendum for contract administration purposes. Rather the security and management controls and standards should be incorporated in the body of all agreements executed under paragraphs (a) and (b). The Committee supports this recommendation.

The security and management controls and standards to be approved by the Compact Council generally will track but not limited to the subject matter in the 1999 CFR amendment. Among others they will include limiting the use of the CHRI to the purposes for which it is provided; prohibit retention and /or re-dissemination of the information unless specifically authorized in the security and management controls and standards; ensure security and confidentiality of the information consistent with the proposal; provide personnel security requirements; and provide for

sanctions;

The Standards Committee has been assigned the responsibility for developing the security and management controls and standards. It will present a separate report to the Council.

Submitted to the Compact Council by
Robert W. McKeever
Chair, Ad Hoc CFR Committee

Attachment #8

WORKING DRAFT Houston -
OUTSOURCING/PRIVATIZATION PROPOSAL - 12/3/02

Criminal history record information, not including information obtained through direct access to the National Identification Index, contained in the III System may be made available:

(a) To governmental agencies, pursuant to a contractual agreement that contains specific security and management controls, acting on behalf of another governmental agency authorized by Federal Statute, Federal Executive Order, or a State Statute that has been approved by the Attorney General to perform a noncriminal justice function. The contractual agreement must incorporate the security and management control standards approved by the Compact Council, which shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided, prohibit retention and/or re-dissemination of the information unless specifically authorized in the security and management control standards; ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Compact Council may require; and

(b) To private contractors or non-profit organizations acting on behalf of a governmental agency specified in paragraph (a), or in the absence of a governmental entity acting on behalf of an authorized recipient, pursuant to a contractual agreement that contains specific security and management controls to perform a

noncriminal justice function authorized by Federal Statute, Federal Executive Order. The contractual agreement must incorporate the security and management control standards approved by the Compact Council, which shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided, prohibit retention and/or re-dissemination of the information unless specifically authorized in the security and management control standards; ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Compact Council may require.

Attachment #9

February 19, 2003

Office of the Federal Register
National Archives and Records Administration
Suite 700
800 North Capitol Street, N.W.
Washington, DC 20408

Dear Sirs:

The Compact Council for the National Crime Prevention and Privacy Compact is announcing its intent to promulgate a rule in cooperation with the Federal Bureau of Investigation's Criminal Justice Information Services Division and its Advisory Policy Board that will enable authorized local, state, and federal governmental agencies and nongovernmental entities to contract with the private sector to perform administrative duties relating to the noncriminal justice use of criminal history record information for employment, licensing, and other authorized purposes. In accordance with the requirements of 42 U.S.C., §14616, I have enclosed an original and two copies of a "Notice of Intent to Publish a Rule Permitting the Privatization of Noncriminal Justice Criminal History Record Check Functions" for publication in the Federal Register as soon as possible. Our billing code is 4410-02. Please contact Mrs. Paula Barron at telephone (304) 625-2749 if

you have any questions, and to confirm the publication date.

Sincerely yours,

Monte C. Strait
Section Chief
Programs Development Section
Criminal Justice Information Services Division

BILLING CODE 4410-02P

**NATIONAL CRIME PREVENTION AND PRIVACY
COMPACT COUNCIL**

**Notice of Intent to Publish a Rule Permitting the Privatization
of Noncriminal Justice Criminal History Record Check
Functions**

AGENCY: National Crime Prevention and Privacy Compact
Council

ACTION: Notice of intent to publish a rule that will permit the
privatization of administrative functions requiring access to
criminal history record information for noncriminal justice
purposes.

AUTHORITY: Title 42, United States Code, Section 14616

SUMMARY: Pursuant to Title 28, Code of Federal Regulations
(CFR), Chapter IX, the Compact Council (Council), established by
the National Crime Prevention and Privacy Compact Act of 1998
(Compact), is issuing notice of its intent to promulgate a rule
enabling third parties to act as agents for governmental and
nongovernmental agencies while performing administrative
functions requiring access to criminal history record information
(CHRI) for authorized noncriminal justice purposes.

Additionally, a limited number of third parties will be preapproved
by the FBI to serve as conduits to send electronic noncriminal
justice fingerprint requests to, and receive CHRI from, the FBI's

Criminal Justice Information Services (CJIS) Division for dissemination to authorized recipients as provided by federal statute or federal executive order.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy L. Morrison, interim FBI Compact Officer, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Telephone (304) 625-2736; E-mail cmorriso@leo.gov; Fax number (304) 625-5388.

SUPPLEMENTARY INFORMATION: The Council is comprised of federal, state and local representatives of criminal and noncriminal justice agencies. The Compact authorizes the Council to establish rules, procedures, and standards for fingerprint-based noncriminal justice criminal history record checks. The Council, in cooperation with the FBI's CJIS Division and its Advisory Policy Board, is announcing its intent to promulgate a rule that will enable authorized local, state, and federal governmental agencies and nongovernmental entities to contract with the private sector to perform administrative duties relating to the noncriminal justice use of CHRI for employment, licensing, and other authorized purposes.

The reason for the proposed rule is that, over the last several years, the volume of authorized fingerprint-based noncriminal justice criminal history record checks has escalated. In many states, the number of fingerprint submissions for noncriminal justice purposes outnumber those submitted for criminal justice purposes. The escalating number of noncriminal justice fingerprint submissions has resulted in increased workloads for local, state, and federal governmental agencies and for nongovernmental entities. Implementation of the Aviation and Transportation Security Act, the USA PATRIOT Act and other federal and state statutes since the terrorist attacks of September 11, 2001, has contributed to the recent increase of authorized criminal history record checks. Efforts are underway to modify the CFR to permit authorized recipients of CHRI to contract with the private sector to accomplish such fingerprint-based criminal history record checks for noncriminal justice purposes and to do so in an efficient, effective, and secure fashion.

Dated:
Monte C. Strait
Section Chief
Programs Development Section
Federal Bureau of Investigation

Attachment #10

[National Fingerprint-based Applicant Check Study](#)

Attachment #11

[Reliability of Centralized Criminal Record Repository Checks](#)

Attachment #12

CJIS Information Letter October 21, 2002

**Authorized Dissemination of Criminal History Record
Information Predicated Upon State A Umbrella@ Statute**

Since September 11, 2001, the Criminal Justice Information Services Division has received numerous requests to background various persons, particularly water plant employees and taxicab drivers. This *CJIS Information Letter* is intended to provide guidance to states so that they can quickly respond to these emergent circumstances.

The FBI=s authority to collect and exchange criminal history record information (CHRI) is generally predicated upon Title 28, United States Code (U.S.C.), Section 534. Prior to 1971, the FBI exchanged records with federal, state, and local agencies for both criminal and noncriminal justice use; however, this practice was altered by *Menard v. Mitchell*, 328 F. Supp. 718 (D.D.C. 1971), in which the district court determined that A Congress never intended to or in fact did authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks. . . . Thus the Court finds that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes

whether or not the record reflects a later conviction.@ 328 F. Supp. at 726-27. In response to *Menard*, the FBI immediately curtailed receipt of fingerprints for nonfederal licensing and employment screening.

Congress responded in December 1971 by enacting Public Law (Pub. L.) 92-184, 85 Stat. 627, 642 (1971), which was superceded in 1972 by Pub. L. 92-544, 86 Stat. 1115 (1972), which states:

The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records . . . if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official

The requirement that access be predicated upon a Astatute@ was reenforced early by the United States Department of Justice (DOJ). Specifically, in a number of instances, either a regulation or a judicial order (typically promulgated by a state supreme court in furtherance of its administrative authority over those engaged in the practice of law) was submitted to the FBI with a claim by the submitting jurisdiction that it satisfied Pub. L. 92-544. In a series of opinions, most notably those involving judicial rules governing bar applicants generally (Acting Attorney General Richard G. Kleindienst memorandum dated April 4, 1972), the State Bar Examiners of New Mexico (Deputy Assistant Attorney General [DAAG] Mary C. Lawton memorandum dated April 12, 1973), and the Florida Board of Law Examiners (DAAG Mary C. Lawton memorandum dated January 22, 1979), DOJ opined that only a legislative enactment satisfies the Astatute@ requirement of Pub. L. 92-544. Therefore, rules and judicial orders cannot satisfy the Astatutory@ requirement of Pub. L. 92-544 because they are not legislative enactments.

Responding to the passage of Pub. L. 92-544, two jurisdictions (Arizona and Idaho) enacted legislation authorizing an exchange of CHRI with county and local officials if supported by a local ordinance. For example, current Idaho Code §67-3008 (Release of

criminal history record information) states:

(1) All units of state, city and local governments . . . which require by statute, rule, or local or county ordinance, fingerprinting of applicants or licensees, are authorized to submit fingerprints to the bureau for examination and further submission, if necessary, to the federal bureau of investigation. The bureau shall be the state=s sole source of fingerprint submissions for criminal justice and applicant or licensing purposes to the federal bureau of investigation.

Then-Acting Director L. Patrick Gray III requested an opinion of DOJ as to whether such delegation to county and municipal authorities pursuant to such Aumbrella@ statute was allowable under Pub. L. 92-544. By memorandum from DAAG Mary C. Lawton to Acting Director Gray dated June 14, 1972, DOJ opined that this was an acceptable delegation:

As you have noted, these statutes were apparently enacted in order to comply with the requirements of Section 902, which conditions the exchange of identification information upon the existence of an authorizing State statute and the approval of the Attorney General. To that end, these statutes permit local non-law enforcement agencies to require fingerprinting by rule, regulation, or ordinance applicable to employment and licensing purposes. You concluded that these delegation statutes authorize the exchange of identification information.

Although it is not clear whether the language in Section 902, Aif authorized by State statute,@ modifies the authority of the State to exchange information with the FBI or the power to require fingerprinting, these statutes can reasonably be read as authorizing both. Furthermore, although the statutes represent a broad delegation of rule making power to local agencies, challenges claiming over-delegation appear to be without foundation, particularly in view of a requirement in both statutes that the local non-law enforcement agencies channel their exchange requests through a central State dissemination unit. Accordingly, we concur in your conclusion that such statutes authorize exchanges of identification information.

In light of DOJ=s opinion, the FBI has approved dozens of county and municipal ordinances in these two jurisdictions. In addition, the Commonwealth of Virginia has enacted Virginia Code Annotated §18.2-308(D), which authorizes counties and municipalities to enact ordinances providing for handgun carry permits.

The attractiveness of this approach is that, upon enactment by state legislatures of an umbrella statute, local authorities can determine what occupations should be criminally backgrounded, particularly in light of particularized or exigent circumstances (including natural disasters). City councils and county commissions/boards of supervisors meet much more frequently when compared to annual or biennial sessions of state legislatures. Lastly, there may be fewer political impediments to adopting local ordinances than enacting statutes dealing with a particular profession.

Suggested language for a state umbrella statute:

Section ____ (Local option regarding criminal backgrounding)

Counties and municipalities may, by county or local ordinance, require the fingerprinting of applicants or licensees in specified occupations for the purpose of receiving criminal history record information by county or local officials. Fingerprint submissions hereunder are authorized to be submitted by a county or municipality to the [state identification bureau] for a check of state criminal records and, if necessary, to the Federal Bureau of Investigation for a national check. The [state identification bureau] will serve as the sole source for receipt of fingerprint submissions and the responses to such submissions from the Federal Bureau of Investigation, which will be disseminated to the county or municipality. Appropriate fees for a state and national criminal history check should be transmitted to the [state identification bureau] unless alternately arranged.

Suggested language for a county or local ordinance:

Section ____ (State and national criminal backgrounding of persons engaged in _____)

[& number] This ordinance is enacted pursuant to [citation to state umbrella statute] to regulate [the issuance of licenses of/the employment of/those engaged in][name of occupation/profession/activity].

[& number] An applicant, employee, or volunteer seeking to engage in [name of occupation] shall submit, if required, two sets of his/her fingerprints taken [by the _____ Sheriff=s Department/ _____ Police Department] to [name of receiving office/department in county/municipality], along with appropriate fees.

[& number] Upon receipt of the fingerprints and the appropriate fees, the [name of receiving office/department in county/municipality] will transmit both sets of fingerprints [and appropriate fees (unless a satisfactory billing arrangement has been entered into between the county/municipality and the state identification bureau)] to the [state identification bureau]. The [state identification bureau] will compare the subject's fingerprints against its criminal file and, [(1) if no disqualifying conduct is found therein (or) (2) if necessary], submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the [state identification bureau], which will disseminate the state and national results to [the submitting office/department in county/municipality].

[& number] If an employer or organization is a private entity, the [office/department in county/municipality] shall render a fitness determination based upon the results of the criminal background check and communicate its fitness determination to such private employer or organization. If an employer or organization is a public entity, the [office/department in county/municipality] shall [(1) render a fitness determination based upon the results of the criminal background check and communicate its fitness determination to such public entity or (2) disseminate the results of the criminal background check to the public entity for a fitness determination].

[& number] In rendering a fitness determination, the [county/municipal office/department or public employer] will decide whether the record subject has been convicted of [or is under pending indictment for][(a) a crime which bears upon his/her ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers].

[& number] A record subject may request and receive a copy of his/her criminal history record information from the [appropriate county/municipal office/department or public employer]. Should the record subject seek to amend or correct his/her record, he/she must contact the [state identification bureau] for a [name of state] state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

Attachment #13

TOPIC 13

Authorized Dissemination of Criminal History Record Information Predicated Upon a State "Umbrella" Statute

The CJIS Information Letter dated October 21, 2002, provided the history of "Umbrella" Statutes and how some states utilized these statutes to allow local governmental entities the flexibility to quickly put licensing and employment background record checks into motion.

BACKGROUND: Prior to 1971, the FBI exchanged records with federal, state, and local agencies for both criminal and noncriminal justice purposes.

The D.C. changed this practice in 1971, finding that Congress had not authorized the dissemination of CHRI to state and local government agencies. *Menard v. Mitchell*, 328 F.Supp. 718 (D.D.C. 1971).

Congress quickly reacted to this case by passing Public Law 92-184, followed shortly thereafter by Public Law 92-544. Congress thus provided that the FBI could share CHRI with state and local agencies if a state first enacted legislation that would be reviewed and approved by the Attorney General.

Today we have about 1,200 such statutes, with the following basic characteristics:

Legislative enactment - Required
(not a regulation or judicial order)
Fingerprints - Extremely Strong Policy
Authorize submission of fingerprints to the FBI -
Strong Policy

Specific category of licensee/applicant - Policy
Government Agency to receive the results - Required

Three jurisdictions (Arizona, Idaho, Virginia) have passed state statutes, approved by the Attorney General, that allow local authorities to determine what occupations should be criminally backgrounded.

This "umbrella" statute provides the state more flexibility in determining what groups should be backgrounded.

Local authorities meet more often.
Reaction to natural disasters is possible.
There are fewer political impediments.

As an example, Arizona has 46 state-wide statutes and one general statute (Arizona Revised Statute 41-1750). That statute permits local nonlaw enforcement governmental agencies to require fingerprinting by rule, regulation, or ordinance applicable to specific employment and licensing purposes, and to channel their exchange requests through a central state dissemination unit.

The following are examples of rules, regulations, and ordinances that have been approved for various Arizona cities, communities, counties, towns, and tribes:

* Ak-Chin Indian Community

A. All prospective employees of the Ak-Chin Indian Community (ARS § 41-1750; Resolution No. A-8-97)

B. Tribal Gaming Agency Licensees to include:
All current and prospective gaming applicants;
all current and prospective non-gaming employees;
tribal regulatory positions; tribal vendor license;
and each principal of said vendor ((ARS § 41-1750;Resolution No. A-6-97)

* Apache County

A. County employees, contract employees, or volunteers to work with children, the elderly or individuals with disabilities (ARS § 41-1750; Ordinance No. 98-25)

* Bullhead City

A. Taxicab license (ARS § 41-1750;Ordinance No. 5-28)

B. Employee, contract employee and volunteers of Bullhead City (**ARS § 41-1750; BCC §2.76.030(C)**
(Amended by Ordinance No. 2000-1072)

* * *

Scottsdale has specific provisions as follows:

A. Auction houses, junk dealers, pawnbrokers, or secondhand dealers (§§ 8-412 and 8-413);(Ordinance No. 2689) formerly (Ordinance No. 1394)

B. City employment (ARS § 41-1750; Ordinance No. 2424)

C. City licensees: (ARS § 41-1750; Ordinance No. 3078)

1. Adult service provider

2. After hours establishments
3. Alarm businesses
4. Auctioneer/auction house
5. Escort services
6. Magic arts establishments
7. Massage therapist/facilities
8. Peddlers
9. Roofers
10. Sale of spirituous liquor
11. Second hand dealers
12. Sexually oriented business
13. Sexually oriented business manager
14. Solicitors
15. Teenage dance
16. Teletrack wagering establishment owners

Examples of statutes applicable to the entire state are as follows:

44. Adult developmental home or child developmental foster home licensee (ARS § 36-594.02)

45. Information Technology personnel with Dept. of Administration (ARS § 41-777)

46. Applicants for certification as home inspectors (ARS § 32-122.02)

47. Applicants for a paid sworn or reserve fire fighter position (ARS § 48-805)

SUMMARY: The Umbrella Statute provides flexibility to state and local governmental units, and it can be much more responsive to a locality's particular need. This is especially true for emergency situations such as tornados, earthquakes, and hurricanes.

Attachment #14

Formal Request Memorandum to the Compact Council

The Transportation Security Administration (TSA) seeks approval

under Parts 901.2 and 901.3 of Title 28, Code of Federal Regulations, for access to the National Crime Information Center (NCIC) (including the Interstate Identification Index (III)) for a delayed fingerprint submission basis so that name-based criminal history records checks can be conducted on commercial truck drivers who are authorized to carry hazardous materials (HAZMAT) (as required by the USA PATRIOT Act, Pub. L. 107-56, Section 1012, *et seq.*; 49 U.S.C. § 5103a)_ for a period not to exceed 120 days from the date of issuance of an Interim Final Rule.

No more than 240 days from the date of issuance of an Interim Final Rule, all HAZMAT commercial truck drivers_ who were subject to a name-based check during the first 120 days will also have their fingerprints captured and submitted to the FBI so that a criminal history records check can be conducted.

Such criminal history records checks are to include the review of available law enforcement databases and records as determined necessary by the Under Secretary of Transportation for Security. In addition, TSA will be accessing other data sources as part of its effort to conduct background checks on commercial truck drivers who are authorized to carry hazardous materials.

_ In pertinent part, the Act reads:

5103a(a) Limitation.

(1) Issuance of licenses. A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license....

(c) Background records check.

(1) In general. Upon the request of a State regarding issuance of a license described in

subsection (a)(1) to an individual, the Attorney General- -

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary of

Transportation of the completion and results of the background records check.

(2) Scope. A background records check regarding an individual under this subsection shall

consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the

alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases through Interpol-U.S.

National Central Bureau or other appropriate means.

_ Will include some portion of current drivers, drivers renewing HAZMAT CDL endorsements, and drivers applying for new HAZMAT CDL endorsements.

TSA makes this request for the following reasons:

- TSA is statutorily mandated to conduct in excess of three million criminal history records checks on commercial truck drivers who transport hazardous materials.
- Congress has made it clear that conducting background checks on commercial truck drivers transporting hazardous materials is a national priority. Given this urgency and the enormous volume of drivers to be checked, it is vital that TSA be given some latitude in conducting the background checks by first utilizing name-based checks while the infrastructure for fingerprint-based checks is put in place.
- TSA believes there are considerable gains in efficiency and efficacy to be made by using name-based background checks followed by fingerprint-based checks.

TSA proposes to carry out name-based background checks within the following parameters:

1. At the first Compact Council meeting following the conduct of name-based background checks for at least 120 days ("120-day test period"), TSA shall report back to the Compact Council.

During this 120-day period, TSA will work closely with the following entities

to develop a robust Nationwide infrastructure for capturing fingerprints on HAZMAT CDL holders:

- a. The Compact Council;
- b. All State central repositories;
- c. All State Departments of Motor Vehicles (DMVs);
- d. The CJIS Division of the FBI, including its Advisory Policy Council;
- e. SEARCH;
- f. The International Association of Chiefs of Police (IACP); and
- g. The American Association of Motor Vehicle Administrators.

2. All drivers who are subject to a name-based background check will be notified in advance of such check that such check will be conducted. The mechanisms for notification will include the Federal Register as well as communications with the trucking industry and driver corps.

3. In no more than 120 days, TSA will have the infrastructure in place to begin fingerprinting all current HAZMAT drivers. Following this initial 120-day period, both fingerprint-based and name-based checks will be conducted.

4. TSA will require that all fees associated with the capture and/or processing of fingerprints and their submission to the FBI be paid at the time of fingerprint capture, particularly for those fingerprints captured and/or processed by State and local law enforcement agencies.

TSA proposes use of NCIC (including III) to be used in conjunction with other analytical approaches TSA has developed to determine whether applicants present a potential terrorist threat or may otherwise be a threat to transportation security. Given the terrorist threat level in transportation, existing statutory mandates, and the lack of adequate infrastructure to conduct fingerprint-based checks, TSA proposes to capitalize on the ability of NCIC (including III) to provide criminal history data on certain classes of applicants.

Approved:

Agreed to:

U.S. Transportation
Security Administration
Compact Council
Date:
Date:

Attachment #15

Formal Request Memorandum to the Compact Council

The Transportation Security Administration (TSA) seeks approval under Parts 901.2 and 901.3 of Title 28, Code of Federal Regulations, for access to the National Crime Information Center (NCIC) (including the Interstate Identification Index (III)), on a delayed fingerprint submission basis, so that name-based criminal history records checks can be conducted expeditiously on certain commercial truck drivers. The USA PATRIOT Act, Pub. L. 107-56, Section 1012, *et seq.*; 49 U.S.C. § 5103a)(1) requires a background check for any individual authorized or seeking to carry hazardous materials (hazmat). TSA will carry out this statutory provision as set forth below.

A. Name-based background checks will be initiated on [effective date of the rule]. If the background check discloses a conviction or incarceration for a disqualifying offense within the time periods specified in the Interim Final Rule, TSA will notify the individual that he or she is disqualified from transporting hazmat. If the individual asserts that the results of the name-based background check are not accurate, the individual will submit fingerprints and/or relevant court documents so that the record may be corrected or the disqualifying offense may be verified.

B. Drivers whose name-based background checks do not indicate a disqualifying offense or incarceration within the time periods specified in the Interim Final Rule will be required to submit fingerprints in the period between 180 days and 5 (five) years from the effective date of the Interim Final Rule, or when applying for a new or renewed hazmat endorsement of their Commercial Driver's

License (CDL), whichever occurs first.

C. If a name-based background check discloses that a driver is the subject of an outstanding felony want or warrant, TSA will ensure that the appropriate law enforcement agency is notified.

Such criminal history records checks are to include the review of available law enforcement databases and records as determined necessary by the Administrator of the Transportation Security Administration. In addition, TSA will be accessing other data sources as part of its effort to conduct background checks on commercial truck drivers who are authorized to carry hazardous materials.

TSA makes this request for the following reasons:

- In accordance with the USA PATRIOT Act, TSA must process criminal history records checks on more than three million commercial truck drivers who transport hazardous materials.
- Congress has determined that conducting background checks on commercial truck drivers transporting hazardous materials is a national priority. Given this urgency and the enormous volume of drivers to be checked, it is vital that TSA be given some latitude in conducting the background checks by first utilizing name-based checks while the infrastructure for fingerprint-based checks is put in place.
- TSA believes there are considerable gains in security to be made by using name-based background checks followed by fingerprint-based checks.

TSA proposes to carry out name-based background checks within the following parameters:

A. At the first Compact Council meeting following the conduct of name-based background checks for at least 180 days ("180-day test period"), TSA shall report back to the Compact Council. During a period of 180 days, TSA will work with the following entities to develop a comprehensive infrastructure for capturing and

processing fingerprints of hazmat CDL holders:

- a. The Compact Council;
- b. State central repositories;
- c. State Departments of Motor Vehicles (DMVs);
- d. The CJIS Division of the FBI, including its Advisory Policy Council;
- e. SEARCH;
- f. The International Association of Chiefs of Police (IACP); and
- g. The American Association of Motor Vehicle Administrators.

B. The public will be notified in advance that drivers will be subject to a name-based background check. The mechanisms for notification will include the Federal Register and communications with the States, the trucking industry, and the driver corps.

C. In no more than 180 days, TSA will have the infrastructure in place to begin fingerprinting all current HAZMAT drivers.

D. All fees for fingerprint collection and processing will be borne by the individual subject to the background check, or by his or her employer.

TSA proposes use of NCIC (including III) to determine whether applicants present a potential terrorist threat or may otherwise be a threat to transportation security. Given the terrorist threat level in transportation, existing statutory mandates, and the lack of adequate infrastructure to conduct fingerprint-based checks, TSA proposes to draw on the ability of NCIC (including III) to provide criminal history data on hazmat drivers.

Approved:

Agreed to:

U.S. Transportation Security
Administration
Compact Council
Date:
Date:

1 In pertinent part, the Act reads:

A. 5103a(a) Limitation.

(1) Issuance of licenses. A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license. . . .

(c) Background records check.

(1) In general. Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General--

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary of Transportation of the completion and results of the background records check.

(2) Scope. A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.